

Message Text

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44-L

ACTION L-03

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FM AMEMBASSY BERN

TO SECSTATE WASHDC PRIORITY 1760

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TAGS: PFOR CFED SZ

SUBJ: JUDICIAL ASSISTANCE TREATY

REF: A) STATE 274207; B) BERN 4801

1. DR. MONNIER INFORMED EMBOFF NOV 25 THAT GOS ACCEPTS DRAFT SET FORTH REF A WITH SLIGHT EDITORIAL CHANGES. IN ADDITION TO PROVIDING TITLE OF IMPLEMENTING LEGISLATION DR. MONNIER STATED THAT "PENAL SANCTIONS" REFERRED TO IN PARA 3 OF DRAFT NOTE SHOULD BE CLARIFIED BY ADDING (AS) "PROVIDED BY ART. 307 OF THE SWISS CRIMINAL CODE". HE ALSO REQUESTED THAT PHRASE "THE APPROPRIATE CANTONAL LAW" IN PARA 3 BE REPLACED BY "THE SWISS CRIMINAL CODE". IN PENULTIMATE PARA DR. MONNIER STATED "GOVERNMENT OF THE SWISS CONFEDERATION" SHOULD BE REPLACED BY LEGAL TERM FOR GOS - "SWISS FEDERAL COUNCIL".

2. THE EMBASSY REGARDS THESE CHANGES AS MINOR AND NON-SUBSTANTIVE AND RECOMMENDS THAT THE DEPT AUTHORIZE THE EMBASSY TO INFORM THE GOS THAT DRAFT NOTE IS ACCEPTABLE. A LATER MESSAGE WILL REQUEST AUTHORIZATION TO EXCHANGE NOTES AND WILL SET FORTH MANNER AND FORM OF THE EXCHANGE.

3. COMPLETE TEXT OF NOTE WITH CHANGES PROPOSED BY DR. MONNIER READS AS FOLLOWS:

"EXCELLENCY, I HAVE THE HONOR TO REFER TO THE TREATY BETWEEN THE UNITED STATES OF AMERICAN AND THE SWISS CONFEDERATION ON UNCLASSIFIED

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT BERN,

MAY 25, 1973, AND THE SWISS FEDERAL LAW OF OCTOBER 3, 1975,
ON THE TREATY WITH THE UNITED STATES OF AMERICA ON MUTUAL
ASSISTANCE IN CRIMINAL MATTERS.

IN VIEW OF THE PROVISIONS OF PARAGRAPH 2 OF ARTICLE 26 OF
THE ABOVE MENTIONED SWISS FEDERAL LAW, THE GOVERNMENT OF
THE UNITED STATES IS CONCERNED THAT EVIDENTIARY MATERIALS
OBTAINED BY THE APPROPRIATE SWISS AUTHORITIES PURSUANT TO
THE APPLICATION OF PARAGRAPH 1 OF ARTICLE 12 OF THE TREATY
MAY NOT BE ADMITTED INTO EVIDENCE IN THE COURTS IN THE
UNITED STATES OF AMERICA. THIS CONCERN IS BASED UPON THE
UNDERSTANDING THAT CERTAIN CANTONS DO NOT HAVE PROVISIONS
FOR TAKING TESTIMONY UNDER EITHER OATH OR AFFIRMATION.
WHERE THOSE CIRCUMSTANCES EXIST, IT IS THE UNDERSTANDING
OF MY GOVERNMENT THAT A WITNESS NONETHELESS WILL BE URGED
TO AGREE TO GIVE HIS TESTIMONY PURSUANT TO FORMAL OATH OR
AFFIRMATION.

I HAVE BEEN REQUESTED TO ASCERTAIN THE PROCEDURES WHICH
WOULD BE INVOKED UPON RECEIPT OF AN APPLICATION FROM THE
CENTRAL AUTHORITY OF THE UNITED STATES PURSUANT TO THE
PROVISIONS OF PARAGRAPH 1 OF ARTICLE 12 OF THE TREATY,
SHOULD AN OATH OR AFFIRMATION BE REFUSED IN THE RELEVANT
CANTON. IT IS THE UNDERSTANDING OF MY GOVERNMENT THAT
THE PENAL SANCTIONS PROVIDED BY ARTICLE 307 OF THE SWISS
CRIMINAL CODE ARE APPLICABLE IN ALL CANTONS OF THE SWISS
CONFEDERATION FOR WILLFULLY GIVING FALSE TESTIMONY, EVEN
WHERE AN OATH OR AFFIRMATION IS NOT PROVIDED FOR IN THE
PROCEDURAL LAW OF THE PARTICULAR CANTON. BASED ON THIS
UNDERSTANDING IT IS AGREED THAT, IN THE EVENT A WITNESS
DECLINES TO GIVE TESTIMONY UNDER A FORMAL OATH OF
AFFIRMATION AND THERE IS NO SPECIFIC PROCEDURAL PROVISION
FOR AN OATH OR AFFIRMATION IN THE APPLICABLE PROCEDURAL
LAW, THE WITNESS WILL BE ADMONISHED TO TELL THE TRUTH PRIOR
TO GIVING TESTIMONY AND WILL BE ADVISED OF THE CONSEQUENCES,
UNDER THE SWISS CRIMINAL CODE, OF HIS FAILURE TO TELL THE
TRUTH AND OF THE FACT THAT THE TRANSCRIPT WILL REFLECT
SUCH INSTRUCTIONS.

IN ADDITION TO THE PROCEDURE OUTLINED ABOVE, AFTER THE
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TESTIMONY HAS BEEN TAKEN, IT WOULD BE DESIRABLE THAT THE
WITNESS SIGN THE TRANSCRIPT AFFIRMING THAT HIS TESTIMONY
IS TRUE, AND IT IS THE UNDERSTANDING OF MY GOVERNMENT THAT
THE WITNESS WILL BE URGED TO SIGN SUCH A STATEMENT.
IF THE FOREGOING UNDERSTANDING IS LIKEWISE THE
UNDERSTANDING OF THE SWISS FEDERAL COUNCIL, I WOULD
APPRECIATE A CONFIRMATION FROM YOUR EXCELLENCY TO THAT
EFFECT.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST
CONSIDERATION.

HARRY I. ODELL, CHARGE D'AFFAIRES
OF THE UNITED STATES OF AMERICA".
ODELL

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